

Serial No. 09/700,057

Docket No. 331645-4

C. REMARKS

The telephone interview with the Examiner is noted with appreciation. The substance of the interview will be incorporated into the response to the rejection of record.

All of the claims stand rejected under 35 USC 103 over Dobbie in view of Milner or Holtz, June 1980 and Holtz October 1980.

As disclosed in the instant specification, there is provided a process for reducing post-operative adhesions. As known and understood in the art, surgical adhesions can form in the post-operative period (the period following an operation in which a patient recovers from the operation). In accordance with the specification, an aqueous formulation containing dextrin is used to reduce the incidence of post-operative surgical adhesions. As disclosed in the specification, the treatment with the aqueous formulation is prior to the post-operative period; e.g., as disclosed in the portion of the specification bearing the heading "EVIDENCE IN SUPPORT OF INVENTION", the rabbits were treated at the end of surgery, followed by a post-operative period in which adhesions can form (in this case the post-operative period ended upon termination of the rabbits seven days after the operation).

The claims, as amended, clarify that which was claimed prior to the amendment; i.e., that in order to reduce the incidence of post-operative surgical adhesions, the formulation is introduced into the body cavity prior to the time at which post-operative surgical adhesions can form.

As set forth during the interview, the prior art as a whole would not lead one skilled in the art to reasonably expect that the claimed material could be successfully employed for reducing post-operative adhesions as claimed.

As indicated during the interview, there were many wishful suggestions in the prior art with respect to reducing the incidence of post-operative adhesions; however, in general such suggestions resulted in failure, except for the claimed subject matter.

As indicated during the interview, the 2007 Review Article from Gynecol Surg. 4:243-253 (included as Tab 7 to the Declaration of Andrew Barrett filed on 29 September 2008) discloses (p. 244, Col. 2. under the heading "Pharmacological agents") that antibiotics and fibrinolytics did not reduce adhesions and, in fact, no pharmacological agents had such an effect.

Except for Adept®, the Review Article (p. 247, under the heading "Broad-coverage fluid agents") discloses that liquid agents including the one disclosed by Holtz have not been successfully used for reduction of adhesions. The Adept® product that is commercially sold for reducing surgical adhesions is a dextrin product in accordance with the defined invention; see Par. 4 of the Declaration of Andrew Barrett of September 29, 2008, and note the Example of the

Serial No. 09/700,057  
Docket No. 331645-4

present application which used Icodextrin.

The Review Article (p. 247, under the heading "Adept ®") then states that the agent used in the claimed invention (a fluid agent) for reduction of post-operative adhesions is the only approved and available adhesion reduction solution.

The prior art applied in the rejection must be considered against the background of numerous suggestions as to how to reduce surgical adhesions and numerous failures.

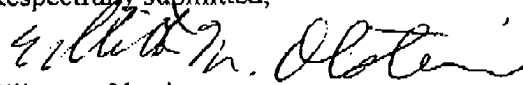
Dobbie discloses that peritoneal dialysis fluids, of which Icodextrin is one example, might be used to reduce the occurrence of adhesions in continuous ambulatory peritoneal dialysis (CAPD). However, Dobbie unequivocally states that such a result was achieved "as long as continuous ambulatory peritoneal dialysis (CAPD) is maintained."

The prior art as a whole would not have reasonably predicted that the claimed dextrin could be successfully used in the claimed process for reducing the incidence of post-operative adhesions merely because Dobbie observed reduction in CAPD adhesions by maintaining continuous dialysis. In the absence of a reasonable expectation of success, Dobbie does not render obvious the claimed subject matter, e.g. KSR Int'l. Co. v. Teleflex 82 USPQ 2d 1385 (2007).

In the interview, based on applicant's arguments, the Examiner indicated that the claims avoided the prior art.

Reconsideration and withdrawal of the rejection are requested.

Respectfully submitted,

  
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